

This letter discusses the issue of nexus. See Quill v. North Dakota, 112 S. Ct. 1902 (1992). (This is a GIL.)

November 13, 1998

Dear Mr. Xxxxx:

This letter is in response to your letter dated August 6, 1998. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

Per the Quill Corporation case, Supreme Court Docket No. 91-194, I don't believe COMPANY should be required to file sales or use tax returns in Illinois.

COMPANY has no physical presence in Illinois, and the only business activity performed is the solicitation of orders by one resident sales representative. Orders are approved in the CITY/STATE corporate office, and goods are shipped from our CITY/STATE or CITY/STATE2 warehouses. Consequently, COMPANY has no nexus in Illinois.

In addition COMPANY is a distributor and not a retailer so the burden of the tax collection should fall upon our customers who sell to the end consumer.

Please provide me with the necessary forms or authorization to exempt COMPANY from filing sales tax returns in the future. Thank you for your assistance in this matter.

We are unable to comply with your request to issue a definitive letter ruling on the issue of whether your company would have nexus for Retailers' Occupation/Use Tax purposes. The Department has found that determinations of nexus in this area are so highly fact-dependent that the disclosure requirements of 2 Ill. Adm. Code 1200.110(b)(1) can rarely be satisfied within the context of a written narrative. Consequently, the best manner to determine nexus in this area is for a Department auditor to examine all relevant facts and information.

We are, however, providing the following general information for your consideration. An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers'

Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S.Ct 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Cause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller.

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State. The Use Tax rate is 6.25%.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.